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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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CHEN CHI WANG,

Plaintiff and Respondent,

v.

JEFFERY M. DAVI, as Real Estate  
Commissioner, etc.,

Defendant and Appellant.

C045937

(Super. Ct. No. 02CS01857)

The facts of this case are complex. When they are unraveled, we conclude Chen Chi Wang and his corporation violated the Subdivided Lands Act by failing to have a valid public report in place when EIC Group sold two undivided 20 percent interests in a lot of a subdivision. The Department of Real Estate (DRE) properly revoked Chen Chi Wang's restricted real estate broker's license based on this violation of the real estate law. We shall reverse the trial court's judgment to the contrary.

## THE SUBDIVIDED LANDS ACT

To understand the facts of this case, a short primer on the Subdivided Lands Act (SLA) is necessary. (Bus. & Prof. Code,<sup>1</sup> § 11000 et seq.) The SLA sets forth the requirements that must be followed prior to the sale, lease, or financing of subdivided lands. (*Ibid*; see *Manning v. Fox* (1984) 151 Cal.App.3d 531, 536.) Subdivided lands are defined as "improved or unimproved land or lands, wherever situated within California, divided or proposed to be divided for sale or lease or financing, whether immediate or future, into five or more lots or parcels." (§ 11000.)<sup>2</sup> Subdivided land also includes land divided into "five or more undivided interests." (§ 11000.1)

"The purpose of the Subdivided Lands Act 'is to protect individual members of the public who purchase lots or homes from subdividers and to make sure that full information will be given to all purchasers concerning public utility facilities and other essential facts with reference to the land.' [Citation.] The law seeks to prevent fraud and sharp practices in a type of real estate transaction which is peculiarly open to such abuses." (*Manning v. Fox, supra*, 151 Cal.App.3d at pp. 541-542.)

To accomplish this purpose, the SLA requires the owner, his agent, or subdivider to notify the DRE in writing of his

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<sup>1</sup> All further statutory references are to the Business and Professions Code unless otherwise indicated.

<sup>2</sup> Section 11000 contains a number of exceptions not pertinent here.

intention to sell or lease subdivided lands and to supply certain information in that notice of intention. (§ 11010.) Upon the submission of the notice of intention, the commissioner must examine the information supplied and issue the subdivider a public report authorizing the sale or lease of lots or parcels within the subdivision, unless there are grounds to deny issuance of the report. (§ 11018.)

Under section 11018.1, a copy of this public report "shall be given to the prospective purchaser by the owner, subdivider or agent prior to the execution of a binding contract or agreement for the sale or lease of any lot or parcel in a subdivision." This notice provision extends to "lots or parcels offered by the subdivider after repossession." (§ 11018.1.) Section 11018.2 provides, "No person shall sell or lease, or offer for sale or lease in this state any lots or parcels in a subdivision without first obtaining a public report from the Real Estate Commissioner."

The SLA contains no definition of an "owner" or "subdivider." The DRE, however, has promulgated regulations that state, in relevant part, "The term 'any person' in Section 11010 and the terms 'owner' and 'subdivider' in Sections 11012 and 11018.1 of the Code include any person, who at any point in time, owns, [five or more subdivision interests in a subdivision other than a timeshare project], for purposes of sale, lease or financing if the subdivision interests were acquired or are to be acquired from the original recipient of a public report for the subdivided land, or from a person who succeeded to the

interest of the original recipient in five or more subdivision interests in a subdivision interests in a subdivision other than a time-share project.” (Cal. Code Regs., tit. 10, § 2801.5.)

Thus, under these statutes, when an owner or subdivider seeks to sell subdivided lands, they must have a valid public report and provide that report to their purchaser prior to the sale. As relevant here, an owner or subdivider is someone who: (a) at any point in time owns five or more subdivision interests in a subdivision for the purpose of sale, lease, or financing; or (b) anyone who acquired five subdivision interests in a subdivision from the original recipient of the public report for that purpose.

“Ignorance of the Subdivided Lands Act is not a defense to prosecution for violating the act. [Citation.] The intentional doing of an act expressly prohibited by statute constitutes the offense denounced by the law regardless of good motive or ignorance of the criminal character of the act. [Citations.] [¶] A person who assists in making sales without conforming to the statute prohibiting such conduct may be found guilty of violating that statute regardless of a belief that assistance in such sales is lawful. [Citations.] Participation in a series of unlawful transactions are circumstances sufficient to show that the person aided and abetted illegal conduct.” (*People v. Byers* (1979) 90 Cal.App.3d 140, 150.) Thus, even though the broker in *Byers* “may have naively concluded that she was not violating the law, she nevertheless voluntarily assisted” in that violation and was therefore guilty of violating the SLA.

(*Id.* at p. 151.) Further, “[a] person may not assist another in violating the Subdivided Lands Act and yet escape liability under the act simply because he was not personally the owner or subdivider of the land.” (*Manning v. Fox, supra*, 151 Cal.App.3d at p. 540.) With this basic framework in place, we turn to the complex facts of this case.

#### FACTUAL AND PROCEDURAL BACKGROUND

##### A

##### *Chen Chi Wang And EIC Group*

Chen Chi Wang was born in Taiwan. He attended college in Taiwan, served in the military, and then immigrated to the United States in 1958. Chen Chi Wang obtained a master’s degree in business administration from the University of California at Berkeley and an electrical engineering degree from San Jose State University. Chen Chi Wang received his real estate license in 1971.

Chen Chi Wang married Victoria Wang in 1965. As of 1982, the Wangs owned hundreds of parcels of property.

Chen Chi and Victoria Wang incorporated EIC Group on May 25, 1982. Chen Chi Wang and his wife each originally owned 49 percent of the shares of the corporation. A relative owned the other 2 percent.<sup>3</sup> EIC Group’s original officers consisted of Chen Chi Wang, his wife, Victoria Wang, and Catherine Wang.

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<sup>3</sup> Chen Chi Wang claimed that there were anywhere from 10 to 16 shareholders of the corporation. He did not elaborate who these shareholders were, and no documentary evidence substantiated this claim.

Chen Chi Wang also claimed that over the years, EIC Group had between 10 and 50 employees. However, Chen Chi Wang personally operated and controlled EIC Group. The corporation always did what Chen Chi Wang's wanted.

In exchange for their shares in EIC Group, the Wangs agreed to transfer their real property to EIC Group as those properties were "resold" by the corporation. They chose to do this over a period of time because there were too many properties to transfer all at once. Sometimes they transferred the cash to the corporation. At other times they transferred or secured note obligations from the sales of those properties to EIC Group.

The business of EIC Group was to sell fractionalized interests in real property in the Lancaster area of Los Angeles and Kern Counties. EIC Group held a corporate real estate broker's license from 1987 until July of 1995. According to Chen Chi Wang, EIC Group participated in buying and selling over 1,000 properties. EIC Group also coordinated the tax payments for the owners of undivided interests in the real property. In the year 2000, EIC Group coordinated property tax payments for over 2,000 parcels. There were also over 2,000 investors in those parcels. During that year, Chen Chi Wang was the president of EIC Group. Victoria Wang was the vice-president, treasurer, and secretary.

Oscar Alvarez worked for EIC Group for many years. He started out as the staff accountant and worked his way up to the company manager. One of Alvarez's duties was to direct people

to prepare documents for Chen Chi Wang's signature. Alvarez often presented those documents to Chen Chi Wang for execution in groups. It was fairly common for Alvarez to present 10 to 20 documents for signature when he met with Chen Chi Wang.

B

*The Initial Subdivision*

Prior to February 1988, the Wangs obtained tract No. 40824, a 120-acre parcel of land in Lancaster, California. The Wangs subdivided Tract No. 40824 into 12 lots.

On January 7, 1988, the Wangs filed a notice of intention under section 11010 for tract No. 40824, seeking the required public report to sell interests in that subdivision. At that time, the Wangs owned the property individually. That notice of intention identified the Wangs, individually, as the subdividers. The notice of intention, however, was executed by Chen Chi Wang in his capacity as president of EIC Group. In a June 1988 follow-up letter, EIC Group explained to the DRE that "We are subdividing [tract No. 40824] to sell undeveloped lots to purchasers" and may offer undivided interests within a particular lot, but no more than four per parcel.

On December 28, 1988, the DRE issued a public report to Chen Chi and Victoria R. Wang. That report expired on December 27, 1993. It was not extended, amended, or renewed.

Clarence Rollerson and Josefina Lorenzana first became acquainted with EIC Group in 1989.<sup>4</sup> At that time, a sales agent from EIC Group, Lien Arden, gave them a presentation on the benefits of buying real property.

In February 1990 (during the time the public report was valid), the Wangs sold lot No. 4 of tract No. 40824 to Rollerson, Lorenzana, and four others in five separate undivided interests. The interests were as follows: Clarence W. Rollerson acquired 25 percent, Josefina Lorenzana acquired 25 percent, Chen Shiu Pi acquired 10 percent, Ronald and Lien Arden acquired 20 percent, and Rod Mendoza acquired 20 percent. These six purchasers executed a note in favor of EIC Group, secured by a deed of trust in lot No. 4 of tract No. 40824. Chen Chi Wang claimed that the deed of trust was in EIC Group's name because they were transferring assets to the corporation in exchange for the stock they received.

C

*EIC Group Forecloses On 40 Percent Of Lot No. 4 And  
Sells That Interest To Lorenzana And Rollerson*

At some point before 1998, EIC Group foreclosed on two interests in lot No. 4 of tract No. 40824 owned by Arden and Mendoza. EIC Group, thus, became an owner of a 40 percent undivided interest in lot No. 4 of tract No. 40824.

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<sup>4</sup> Rollerson was the only one of the two to testify at the administrative hearing held in this case. The parties stipulated that Lorenzana's testimony would be substantially the same as Rollerson's.



In 1998, Rollerson and Lorenzana received a letter from Kay Cesare, a "Foreclosure Officer" for EIC Group. That letter included a reassignment of the deed of trust for lot No. 4 back to Chen Chi and Victoria Wang from EIC Group. The letter instructed Rollerson and Lorenzana to make all further payments under the note and deed of trust to the Wangs.

Chen Chi Wang's explanation for the reassignment of this note and deed of trust was that EIC Group was repaying a cash advance he provided the corporation to cover the corporation's payroll in the 1990's. He explained he was regularly forced to loan the corporation his personal money to cover these expenses.<sup>5</sup>

Prior to February 2000, Rollerson and Lorenzana made all of the tax payments on their interest in lot No. 4 to EIC Group. On about January 26, 2000, they received a letter from EIC Group that contained a notice of auction for lot No. 4 of tract No. 40824. The letter and notice informed Rollerson and Lorenzana that lot No. 4 would be sold at auction because of delinquent tax payments. The letter advised them to pay their share of the delinquent taxes directly to the Los Angeles County Tax Collector.

Alvarez explained that at that time many interests in the parcels they managed were being sold for delinquent taxes. Alvarez claimed that tax delinquencies had been a problem for

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<sup>5</sup> Chen Chi Wang submitted promissory notes executed by the corporation, most of which were accompanied by resolutions of the corporation authorizing them, documenting some of these loans.

EIC Group for years. Where properties had tax delinquency problems, Alvarez and Chen Chi Wang had agreed that they would transfer EIC Group's interest in the property in exchange for payment of the taxes and some payment to the corporation.

On February 6, 2000, Rollerson and Lorenzana responded to EIC Group's notice. They informed EIC Group they had paid their share of the taxes. Rollerson and Lorenzana offered to purchase EIC Group's interest in the property by paying the delinquent taxes.

On February 18, 2000, EIC Group, through Alvarez, responded with a counter offer of its own. EIC Group offered to "gift" EIC Group's 40 percent interest in lot No. 4 of tract No. 40824 to Rollerson and Lorenzana if they paid the delinquent taxes and accepted a \$6,000 additional balance to their existing note balance. Alvarez believed this was consistent with his discussions with Chen Chi Wang about what to do under these circumstances.

Rollerson and Lorenzana accepted this offer and paid the delinquent taxes.

Meanwhile, on March 30, 2000, EIC Group filed for chapter 11 bankruptcy protection. At that time, EIC Group had liabilities of \$16.5 million and assets of \$4 million. EIC Group operated as a debtor-in-possession until July 31, 2000. As of July 31, 2000, Charles Sims, a court-appointed trustee, took over the operations of EIC Group.

Sims allowed EIC Group to continue to run as it had before he took over. According to Sims's bankruptcy attorney, the

Wangs had complete control of EIC Group. On the other hand, Chen Chi Wang claimed the bankruptcy trustee made it clear that he was running the corporation, and that Chen Chi Wang was acting merely in an administrative capacity.

During the bankruptcy proceedings, it became apparent that EIC Group failed in its mission to coordinate the tax payments for the many fractionalized interests it had sold in real property. The bankruptcy attorney noted that during February 2001, a large stack of tax delinquency notices were found in EIC Group's office.

As of July 2000, EIC Group had failed to execute a deed in favor of Rollerson and Lorenzana, despite a number of telephone calls between the parties. Alvarez was overwhelmed with work for EIC Group and claimed he was understaffed. There were only three or four employees in the office at this time, and two of those people worked part time.

On July 18, 2000, Rollerson and Lorenzana wrote a letter to Alvarez demanding performance of their agreement.

On August 4, 2000, EIC Group executed a grant deed for the two 20 percent interests in the property in favor of Rollerson and Lorenzana. Alvarez presented that deed to Chen Chi Wang for his signature along with several other documents. Chen Chi Wang admitted he signed the grant deed as president of EIC Group, but did not recall actually signing the document. That same day, EIC Group forwarded a copy of the grant deed to Rollerson and Lorenzana with a note and deed of trust in favor of EIC Group. The accompanying letter explained that EIC Group would record

the deed upon the execution and return of the note and deed of trust. Rollerson and Lorenzana executed the note and deed of trust and returned it to EIC Group.

Chen Chi Wang claimed he had no idea this transaction might require a public report. The grant deed was recorded on October 12, 2000.

The bankruptcy trustee for EIC Group found out about this transaction in September 2000, when a check request came through for \$48 to record the grant deed and deed of trust. The trustee determined the check request was in the ordinary course of business and authorized payment. The trustee, however, did not authorize the transaction itself.

D

*The DRE Administrative Proceedings*

On October 17, 2001, the DRE filed an accusation against Chen Chi Wang. In that accusation, the DRE alleged that in 1998, the commissioner of the DRE had revoked Chen Chi Wang's broker's license and issued him a restricted license.

Chen Chi Wang claimed this restriction arose out of a complaint by a disgruntled former employee who claimed he was entitled to wages. Rather than incur the costs of fighting the charges, he agreed to accept the discipline imposed.

The accusation further alleged that the commissioner of the DRE determined that in 1992 Chen Chi Wang had violated sections 11010 and 11018.2, and in June 2000, he violated section 11018.2. As a result of these violations, the commissioner issued two orders requiring Chen Chi Wang to desist and refrain

from selling, leasing, or offering for sale any part of any subdivision without obtaining the required public report from the DRE.

Chen Chi Wang claimed that the initial 1992 cease and desist order had arisen as a result of the accidental creation of a subdivision because EIC Group had acquired a number of contiguous parcels. He did not know he had violated the law and worked with the DRE and his lawyers to fix this problem.

Chen Chi Wang claimed the June 2000 cease and desist order arose out of the same type of circumstance. Chen Chi Wang claimed he did not know he had violated the real estate law in this instance either.

The central allegation of the current accusation was that the October 2000 sale of the 40 percent interest in lot No. 4 to Rollerson and Lorenzana violated section 11018.2 because there was no valid public report for the subdivision at that time. Further, the DRE alleged this sale violated the cease and desist orders in violation of section 11019, subdivision (b). Thus, the DRE sought the revocation of Chen Chi Wang's broker's license because he willfully violated provisions of the real estate law. (§ 10177, subd. (d).)

An administrative law judge (ALJ) conducted an evidentiary hearing. During that hearing, the DRE presented the documents showing the two cease and desist orders issued against Chen Chi

Wang and that his license was restricted. The ALJ also took evidence on the facts recited above.<sup>6</sup>

In her proposed decision, the ALJ concluded: "The public report authorizing the sale of interests in Lot 4 of Tract 40824 in Los Angeles County expired in 1993. On August 3, 2000, an interest [in] Lot 4 was sold. The owner of the interest was EIC, a corporation. EIC therefore violated section 11018.2. [¶] [Chen Chi Wang] was a licensed real estate broker in 2000. He had previously been served with two orders to desist and refrain from violating section 11018.2. [Chen Chi Wang] therefore violated sections 10177(d) and 11019(b). [¶] The fact that [Chen Chi Wang] sold the interest and signed the grant deed in his capacity as president of a corporation makes no difference in this instance. [Chen Chi Wang] was a licensed real estate broker at the time. He committed an act that was a violation of the real estate law. He is therefore subject to license discipline for that act." The ALJ ordered Chen Chi Wang's real estate broker's license revoked. The commissioner of the DRE adopted the proposed decision.

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<sup>6</sup> The DRE also offered exhibits tending to show that EIC Group owned interests in tract No. 40824 other than the ones in lot No. 4 at issue here. The ALJ determined that those exhibits were not relevant to the case and did not admit them into evidence.

E

*The Trial Court's Judgment*

Chen Chi Wang filed a petition for a writ of mandate in the trial court. Among other things, he argued that the SLA did not apply to the foreclosure sale transaction because EIC Group was the seller of the 40 percent interest and it had not acquired more than five interests in the subdivision. The trial court agreed. The trial court entered a judgment granting Chen Chi Wang's petition for writ of mandate. The trial court ordered the DRE to vacate its decision imposing discipline on Chen Chi Wang.

Chen Chi Wang served a notice of entry of judgment on the DRE on January 12, 2004. The DRE filed its timely notice of appeal from this appealable judgment on January 20, 2004.

DISCUSSION

I

*Standard Of Review*

The DRE argues we must review its factual findings under the substantial evidence standard of review and its legal conclusions under a de novo standard of review. Chen Chi Wang argues that the appropriate standard of review for the entire case is an independent review because the facts material to the decision are not in conflict. We agree with the DRE.

Under Code of Civil Procedure section 1094.5, subdivision (c), "Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the

evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record."

"[T]he choice of the standard for review depends upon whether 'an administrative decision or class of decisions substantially affects fundamental vested rights and thus requires independent judgment review.'" (*Apollo Estates, Inc. v. Department of Real Estate* (1985) 174 Cal.App.3d 625, 633.) In *Apollo Estates*, the appellate court concluded that a real estate broker's license that was restricted was not a vested right and therefore the court's standard of review of the DRE's revocation of that license was that of substantial evidence. (*Id.* at p. 635-636.) Thus, we review the findings of the commissioner of the DRE under the substantial evidence standard of review.

As to the judgment of the trial court, "our review is de novo, and [we are] not bound by the trial court's conclusions. The decisions of the agency are nevertheless given substantial deference and presumed correct. The parties seeking mandamus bear the burden of proving otherwise, and the reviewing court must resolve reasonable doubts in favor of the administrative findings and determination." (*San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 674.)



Here, the standard of review is critical as to the question of whether EIC Group is the alter ego of Chen Chi Wang because the alter ego determination is a factual determination for the trier of fact, not a question of law. A finding that one corporation is the alter ego of the other is "primarily one for the trial court and is not a question of law; and . . . the conclusion of the trier of fact will not be disturbed if it [is] supported by substantial evidence." (*Associated Vendors, Inc. v. Oakland Meat Co.* (1962) 210 Cal.App.2d 825, 837.) Thus, we must review the record to determine if the DRE's implied alter ego finding is supported by substantial evidence.

## II

### *The Violation Of SLA By EIC Group Was Chargeable To Chen Chi Wang*

Whether the DRE's revocation of Chen Chi Wang's license was proper depends on the answer to two related questions: First, did the sale of the 40 percent interest in lot No. 4 of tract No. 40824 in 2000 violate the SLA? Second, if there was a violation, is that violation chargeable to Chen Chi Wang? Because the record contains substantial evidence to support the DRE's implied finding EIC Group was the alter ego of Chen Chi Wang (and hence the two constituted a single entity), the answer to both questions is "yes."

As to the first question, when the corporate veil between Chen Chi Wang and EIC Group is disregarded, Chen Chi Wang and EIC Group together owned more than five subdivision interests in tract No. 40824 for the purpose of sale or financing. Thus,

together they were both subdividers and owners of those interests. Under section 11018.1, a valid public report was required for the 2000 sale of the 40 percent interest in lot No. 4 of tract No. 40824 to Rollerson and Lorenzana. (§ 11018.1; Cal. Code Regs., tit. 10, § 2801.5) As to the second question, because there is no distinction between Chen Chi Wang and EIC Group, the illegal sale of the interest is chargeable to Chen Chi Wang and his broker's license.

"The figurative terminology "alter ego" and "disregard of the corporate entity" is generally used to refer to the various situations that are an abuse of the corporate privilege.'

[Citation.] The purpose behind the alter ego doctrine is to prevent defendants who are the alter egos of a sham corporation from escaping personal liability for its debts.

[Citation.] . . . [¶] 'Before the courts will disregard the corporate entity of one corporation and treat it as the alter ego of another, even though the latter may own all the stock of the former, it must further appear that there is such a unity of interest and ownership that the individuality of the one corporation and the owner or owners of its stock has ceased and, further, that the observance of the fiction of separate existence would under the circumstances sanction a fraud or promote injustice. In other words, bad faith in one form or another must be shown before the court may disregard the fiction of separate corporate existence. [Citations.]'" (*Hennessey's Tavern, Inc. v. American Air Filter Co.* (1988) 204 Cal.App.3d 1351, 1358.)

The court in *Associated Vendors, Inc. v. Oakland Meat Co.*, *supra*, 210 Cal.App.2d at pages 838-840, provided an exhaustive list of factors considered by courts in determining whether to pierce the corporate veil of a corporation. Those factors include: "Commingling of funds and other assets, failure to segregate funds of the separate entities, and the unauthorized diversion of corporate funds or assets to other than corporate uses [citations]; the treatment by an individual of the assets of the corporation as his own [citations]; the failure to obtain authority to issue stock or to subscribe to or issue the same [citations]; the holding out by an individual that he is personally liable for the debts of the corporation [citations]; the failure to maintain minutes or adequate corporate records, and the confusion of the records of the separate entities [citations]; the identical equitable ownership in the two entities; the identification of the equitable owners thereof with the domination and control of the two entities; identification of the directors and officers of the two entities in the responsible supervision and management; sole ownership of all of the stock in a corporation by one individual or the members of a family [citations]; the use of the same office or business location; the employment of the same employees and/or attorney [citations]; the failure to adequately capitalize a corporation; the total absence of corporate assets, and undercapitalization [citations]; the use of a corporation as a mere shell, instrumentality or conduit for a single venture or the business of an individual or another corporation

[citations]; the concealment and misrepresentation of the identity of the responsible ownership, management and financial interest, or concealment of personal business activities [citations]; the disregard of legal formalities and the failure to maintain arm's length relationships among related entities [citations]; the use of the corporate entity to procure labor, services or merchandise for another person or entity [citations]; the diversion of assets from a corporation by or to a stockholder or other person or entity, to the detriment of creditors, or the manipulation of assets and liabilities between entities so as to concentrate the assets in one and the liabilities in another [citations]; the contracting with another with intent to avoid performance by use of a corporate entity as a shield against personal liability, or the use of a corporation as a subterfuge of illegal transactions [citations]; and the formation and use of a corporation to transfer to it the existing liability of another person or entity [citations]. A perusal of these cases reveals that in all instances several of the factors mentioned were present. It is particularly significant that while it was held, in each instance, that the trial court was warranted in disregarding the corporate entity, the factors considered by it were not deemed to be conclusive upon the trier of fact but were found to be supported by substantial evidence."

Here, substantial evidence exists to support the implied finding of the commissioner of the DRE that EIC Group is the alter ego of Chen Chi Wang. As to the unity of interest between

the two, the ownership of the corporation was concentrated in Chen Chi Wang and his wife, with a relative holding a token interest in the corporation. Chen Chi Wang and his wife owned 98 percent of the corporate stock of EIC Group. Chen Chi Wang exercised complete dominion and control over EIC Group and it always did what Chen Chi Wang wanted it to do.

The Wangs funded the corporation with a promise to turn over their properties to the corporation. Rather than follow the corporate formalities of deeding all of the properties to the corporation, the Wangs transferred notes and deeds of trust between themselves and the corporation during the ensuing years. Further, Chen Chi Wang regularly loaned his personal funds and assets to the corporation to fund its operations and received those same properties back as payments. The corporation was thus used as a conduit of the business of Chen Chi Wang.

The transactions at issue here demonstrate Chen Chi Wang's interchangeable use of his personal and corporate capacities. Tract No. 40824 was owned by the Wangs individually. However, the Wangs used employees of EIC Group to process its notice of intention to sell their personal property. Further, Chen Chi Wang signed the notice of intention to sell those subdivided lands in his corporate capacity.

As to lot No. 4 of tract No. 40824, Chen Chi Wang and his wife sold that lot to Rollerson and Lorenzana, but required the note and deed of trust to be executed in favor of EIC Group in payment for the corporate stock already issued to the Wangs.

Later, however, the note and deed of trust were transferred back to the Wangs by EIC Group.

The corporation also had a problem with adequate capitalization as shown by its bankruptcy filing. At that time, the corporation had debts of \$16.5 million and assets of \$4 million. Further, at the time of the 2000 transaction at issue here, the corporation had a skeleton crew of employees.

In terms of the second element of alter ego, there is substantial evidence that recognition of a separate existence would sanction fraud or produce injustice. These subdivided properties had significant tax delinquencies at the time of this sale, presumably due to the mismanagement of the tax payments by EIC Group. Moreover, recognizing the separate existence of EIC Group in this situation would sanction the sale of subdivided lands without obtaining a public report, thwarting the public policy of protecting consumers that underlies the SLA. In this context, Chen Chi Wang was far from an innocent citizen caught up in the technicalities of the SLA. Rather, he was a "sophisticated real estate professional." He was under two specific orders to desist and refrain from selling interests in subdivisions without public reports and his license was restricted for his previous violations of these precise provisions. These facts support the inference that the corporation was used to sidestep the requirements of the SLA. The ALJ's determination to ignore the separate existence of the corporation in this instance is supported by substantial evidence.

We further reject Chen Chi Wang's contention that the issue of alter ego was not properly before the ALJ because it was "not even pled as a theory of liability in the Accusation."

Similarly we reject Chen Chi Wang's argument that the DRE did not argue alter ego as a theory of liability before the ALJ.

It is not necessary to plead the concept of alter ego. (*Pan Pacific Sash & Door Co. v. Greendale Park, Inc.* (1958) 166 Cal.App.2d 652, 655-656; *Hennessey's Tavern, Inc. v. American Air Filter Co.*, *supra*, 204 Cal.App.3d at p. 1358.) "An alter ego defendant has no separate primary liability to plaintiff. Rather, plaintiff's claim against the alter ego defendant is identical with that claimed by plaintiff against the already-named defendant." (*Hennessey's Tavern*, at p. 1358.) Thus, the issue may be raised by simply pleading the individual is liable for the acts giving rise to liability. (*Los Angeles Cemetery Assn. v. Superior Court* (1968) 268 Cal.App.2d 492, 494.) The issue is also properly raised by the denials of the individual sought to be charged with the liability for the corporate acts or in cases where that individual has not been misled to his prejudice by a variance between the pleadings and proof. (*Pan Pacific Sash & Door Co. v. Greendale Park, Inc.*, *supra*, 166 Cal.App.2d at p. 656.) That is the case here.

In the accusation, the DRE contended that "Respondent," that is, Chen Chi Wang, violated the SLA by virtue of his sale of the 40 percent interest in lot No. 4 of tract No. 40824. This simple allegation was sufficient to raise the issue of

whether EIC Group was the alter ego of Chen Chi Wang such that Chen Chi Wang was liable for the acts of EIC Group.

Moreover, during its oral presentation to the ALJ, the DRE argued that it "intends to prove that at all times relevant to this case . . . Chen Chi Wang and his wife exercised pervasive operation [and] control over all the functions of EIC Group, including the offering and negotiating and sale of lots and undivided interests in Tract 40824." The DRE further argued "[t]here will be evidence to tend to show that EIC and the Wangs were largely [a] conduit for one another."

In its initial brief, the DRE argued Chen Chi Wang and EIC Group worked "hand in glove with one another to divide the tract into five or more lots and also into five or more undivided interests." In his responsive brief, Chen Chi Wang argued the DRE had not established the requisite proof to pierce the corporate veil of EIC Group under the alter ego theory. In its closing brief, the DRE argued the facts show that Chen Chi Wang and EIC Group commingled their affairs, and that the corporate separateness should be disregarded when a corporation is used by "an individual to circumvent a statute, perpetrate a fraud or accomplish some other wrongful or inequitable purposes.'" Thus, the issue of alter ego was properly before the ALJ and the DRE.

Chen Chi Wang also argues there is no finding in the record that EIC Group was the alter ego of Chen Chi Wang. We conclude the ALJ's decision as adopted by the commissioner of the DRE contains the implied finding that EIC Group is the alter ego of Chen Chi Wang.



In administrative proceedings, "[t]he findings of an administrative agency must be sufficient to enable the parties to determine whether and upon what basis they should seek review and to allow a reviewing court to determine the basis for the agency's action. [Citation.] However, great specificity is not required. It is enough if the findings form an analytic bridge between the evidence and the agency's decision. [Citation.] In addition, findings are to be liberally construed to support rather than defeat the decision under review. [Citation.] '[W]here reference to the administrative record informs the parties and reviewing courts of the theory upon which an agency has arrived at its ultimate finding and decision it has long been recognized that the decision should be upheld if the agency "in truth found those facts which as a matter of law are essential to sustain its . . . [decision]." [Citations.]' [Citation.]" (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1989) 214 Cal.App.3d 1348, 1356.)

Findings may be thus implied from the agency's determination. (*Golde v. Fox* (1979) 98 Cal.App.3d 167, 179.) ""[W]hile full findings are required upon all material issues a judgment will not be set aside on appeal because of a failure to make an express finding upon an issue if a finding thereon, consistent with the judgment, results by necessary implication from the express findings which are made."" (*Ibid.*)

We conclude the ALJ's decision as adopted by the commissioner contained the necessary implied finding that EIC Group was the alter ego of Chen Chi Wang. As discussed above,

the ALJ found that EIC Group was the owner of 40 percent interest in lot No. 4 of tract No. 40824 and violated section 11018.1 when it sold that interest. In the same numbered paragraph of that finding, the ALJ found that Chen Chi Wang violated section 11019, subdivision (b), because he violated the prior orders to desist and refrain from violating section 11018.1. Finally, the ALJ found that "[t]he fact that [Chen Chi Wang] sold the interest and signed the grant deed in his capacity as president of the corporation makes no difference in this instance." These findings demonstrate that the ALJ disregarded the existence of the EIC Group as a corporation separate and apart from Chen Chi Wang. As we have already concluded, substantial evidence supports this implied finding.<sup>7</sup>

#### DISPOSITION

The judgment of the trial court is reversed. The matter is remanded for further proceedings on the propriety of the

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<sup>7</sup> We thus do not address the DRE's related arguments: (a) that EIC Group and Chen Chi Wang were both separate owners, subdividers, or agents of the subdividers of tract No. 40824; (b) that Chen Chi Wang aided EIC Group in its own violation of the SLA because EIC Group was an owner or subdivider of tract No. 40824 on its own; or (c) whether the ALJ erred in failing to admit evidence of deeds showing that EIC Group owned other interests in tract No. 40824 such that it was an owner or subdivider.

discipline imposed by the DRE. The DRE shall recover its costs on appeal. (Cal. Rules of Court, rule 27(a)(2).)

\_\_\_\_\_, J.  
ROBIE

We concur:

\_\_\_\_\_, P.J.  
SCOTLAND

\_\_\_\_\_, J.  
MORRISON